

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KENNETH FRISCO,

Plaintiff,

-against-

THE CITY OF NEW YORK; and THE
DEPARTMENT OF CORRECTION,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 6/18/2024

23-cv-8915 (MKV)

ORDER

MARY KAY VYSKOCIL, United States District Judge:

In an Order dated February 29, 2024, the Court granted Defendant's request for leave to file a motion to dismiss the Complaint in this matter, which Plaintiff filed *pro se* [ECF No. 10]. In the same Order, the Court *sua sponte* granted Plaintiff leave to amend and warned Plaintiff that **"failure to file an amended complaint by March 26, 2024 will be deemed a waiver"** of the opportunity to amend [ECF No. 10 at 1 (emphasis in original)]. The Court also set a deadline of May 7, 2024 for Plaintiff to file an opposition to Defendant's motion to dismiss.

Plaintiff did not file an amended complaint. Defendant timely filed a motion to dismiss and appropriate notices to the *pro se* plaintiff [ECF Nos. 11, 12, 13, 14]. Plaintiff did not file an opposition to the motion to dismiss.

The Court is now in receipt of a letter from Defendant requesting that its motion to dismiss be deemed fully submitted, since Plaintiff failed to file an opposition [ECF No. 15]. The Court is also in receipt of a letter from Plaintiff: (1) asking the status of the case; (2) stating that he has "found a person to assist" him in this litigation; and (3) requesting an extension of time and leave to amend the complaint [ECF No. 16].

The Court is required to grant a *pro se* litigant “special leniency.” *LeSane v. Hall’s Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001). Thus, although Plaintiff failed to file an opposition by the Court-ordered deadline, Defendant’s request that its motion to dismiss be deemed fully submitted [ECF No. 15] is DENIED.

Turning to Plaintiff’s letter [ECF No. 16], this Order summarizes the status of this case. If Plaintiff has found an attorney to represent him in this litigation, IT IS HEREBY ORDERED that the attorney must file a notice of appearance on ECF no later than July 12, 2024. **If no attorney appears on Plaintiff’s behalf by July 12, 2024, Plaintiff must still comply with the deadlines below while proceeding *pro se*.**

IT IS FURTHER ORDERED that, if Plaintiff wishes to file an amended complaint (with or without the assistance of counsel), the amended complaint must be filed on ECF by **July 26, 2024. Plaintiff is on notice that this is his FINAL opportunity to amend the complaint to cure issues identified in Defendant’s motion to dismiss. Failure to file an amended complaint by July 26, 2024 will be deemed a waiver of the opportunity to amend.**

The filing of an amended complaint will moot Defendant’s pending motion to dismiss the Complaint. However, **if Plaintiff elects not to amend, IT IS FURTHER ORDERED that Plaintiff must file an opposition to the pending motion to dismiss by July 26, 2024.**

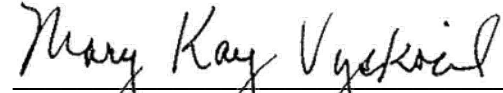
Plaintiff is on notice that failure to comply with this Order and file either an amended complaint, or an opposition to Defendant’s motion by July 26, 2024 might result in dismissal of this action, with prejudice, for failure to comply with court orders and prosecute this case. The Court has already granted Plaintiff leniency, and “*pro se* status ‘does not exempt a party from compliance’” with court orders and procedural rules. *Triestman v. Fed. Bureau of Prisons*, 470

F.3d 471, 477 (2d Cir. 2006) (quoting *Traguth v. Zuck*, 710 F.2d 90, 95 (2d Cir. 1983)).

Any request for an extension of the deadlines set forth above shall be made by letter and must be filed on ECF at least 48 hours before the deadline.

SO ORDERED.

Date: June 18, 2024
New York, NY



MARY KAY VYSKOCIL
United States District Judge